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SUPREME COURT, U.S.
FILED

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Docket Number _____

IN THE SUPREME COURT OF THE UNITED STATES
OF AMERICA

CHRISTINE SOLEM
and
JOHN COLES,
Petitioners

v.

COMMONWEALTH OF VIRGINIA,
Respondent

On Petition for Writ of Certiorari to the Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The Court ruled in Camara v. Municipal Court, 387 U.S. 523 (1967) that home occupants have a constitutional right to insist that government inspectors obtain a warrant to search, and may not constitutionally be convicted for refusing to consent to the inspection. The questions presented are:

1. Whether a legitimate home occupant's refusal to permit entry of government agents into her home for an administrative inspection constitutes a valid offense and probable cause for the issuance of a criminal search warrant to search it.

2. Whether the home occupants' Fourth Amendment rights are violated when the state uses evidence obtained in such search to prosecute and convict them of offenses unrelated to such refusal.

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE.

There is no written opinion in the case by the Virginia Supreme Court. The opinion of the Court of Appeals of Virginia is unpublished, and hence not in an official or unofficial reporter.

STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT.

A. Date the order sought to be reviewed was entered: October 9, 2003.

B. Date of any order respecting a rehearing: January 30, 2004.

C. Express reliance on Rule 12.5: not applicable.

D. Statutory provision believed to confer on this Court jurisdiction to review the on a writ of certiorari the judgment or order in question: 28 U.S.C. sec. 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE:

U.S. Const., Amend., IV, "The right of the people to be secure in their persons,

houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons or things to be seized."

U.S. Const., Amend., V, "No person... shall be compelled in any criminal case to be a witness against himself[.]"

U. S. Const., Amend. XIV, "[N]or shall any state deprive any person of life, liberty, or property without due process of law..."

Virginia Code (1950) ["V.C."] section ["sec."] 3.1-399

V.C. sec. 3.1-387, "For the purpose of this article:

(1) The term "Commissioner" means the Commissioner of Agriculture and Consumer Services...

...

(3) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article."

V.C. sec. 3.1-388, "The following acts and the causing thereof within the Commonwealth are hereby prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or misbranded.

...

(e) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by sec. 3.1-399."

V.C. sec. 3.1-390(a), "Any person who violates any of the provisions of 3.1-388 shall be guilty of a misdemeanor and shall on conviction thereof be punished in the manner provided by law for the punishment of misdemeanors..."

V.C. sec. 3.1-398.1

V.C. sec. 3.1-418

V.C. sec. 18.2-12, "A misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor."

V.C. sec. 18.2-11, "The authorized punishments for conviction of a misdemeanor are:

(a) For Class 1 misdemeanors, confinement in jail for not more than twelve months and a fine of not more than $2,500, either or both..."

V.C. sec. 19.2-52

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V.C. sec. 19.2-54

V.C. sec. 19.2-56

V.C. sec. 19.2-59

V.C. sec. 19.2-393

V.C. sec. 19.2-394

V.C. sec. 19.2-395

V.C. sec. 19.2-396

V.C. sec. 19.2-397

V.C. sec. 3.1-368, "Food in the process of manufacture, preparation, packing, storing, sale or distribution, must be securely protected from flies, dust, dirt and as far as may be necessary, from all other foreign or injurious contamination..."

V.C. sec. 3.1-381, "Any person, firm, corporation or association violating any of the provisions of the preceding sections of this article [Art. 2, including 3.1-368] shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than $25 nor more than $300."

V.C. sec. 3.1-395

V.C. sec. 17.1-410

CONCISE STATEMENT OF THE CASE

James A. Morano, Jr. ("Morano"), a Review and Compliance Officer with the Virginia Department of Agriculture and Consumer Services ("VDACS"), received information that on June 19, 1999, an individual identifying himself as John Coles had sold goats cheese to Joe Fabri-

zio and Laurie Malony, they then being food inspectors with VDACS, at the Farmers' Market in Charlottesville, Virginia, and that he resided at 1836 Polo Grounds Road, Charlottesville. On June 22, 1999, Gerald Williams, a State Food Safety Specialist with VDACS, and Ralph Ollinger, a VDACS Inspector, with no search warrant or other warrant, drove to 1836 Polo Grounds Rd., Satyrfield Farm. They turned off the paved highway onto a winding dirt, gravel road running through woods which was on the property leading to the residence, which sits on 10 acres.

Williams admitted there had been no complaint regarding the goat cheese, Solem or Coles, or the property. The inspectors gave no advance notice they would be coming. They approached the residence, which is not visible from the highway due to woods, and walked up to the back door of the home.

One knocked on the door. Solem, who was inside, in the middle of an exercise tape, dressed in a black leotard, went to the door and opened it. The agents said they were there to inspect her kitchen.

Solem went out onto the back steps, shutting the door behind her. After verifying there had been no complaint about her cheese, she explained she did not believe she could be subjected to a warrantless entry, and would not allow it. There was some arguing over whether the agents could inspect without a warrant, but they then left.

Later that day, Morano swore out an affidavit to Magistrate Carolyn P. Peyton, who issued a traditional criminal search warrant to search the above residence. The affidavit and warrant appear on a form which is based on Virginia Code sections 19.2-54, 56, 57 (and now deleted

Va. Sup. Ct. Rule 3A:27), the form portions of which appear below in bold face type, and the handwritten portions in the affidavit, and typed portions in the warrant, appear in regular type:

APPLICANT:
James A. Morano, Jr., Review and Compliance Officer, Va. Dept. of Agriculture & Consumer Services, Office of Dairy and Foods, 1100 Bank St., Richmond, VA 23219

AFFIDAVIT FOR SEARCH WARRANT
The undersigned Applicant states under oath:
1. A search is requested in relation to an offense substantially described as follows: Refusal to permit entry of agents of the Commissioner of Agriculture and Consumer Services for the purpose of inspection and the taking of a food sample. Va. Code 3.1-388(e)

2. The place, person, or thing to be searched is described as follows: Satyrfield Goat Farm, 1836 Polo Grounds Road, Charlottesville, VA (in Albemarle County). A faded masonite board two story residence and surrounding barns used for milking goats and/or storage of food products, food ingredients and/or food processing equipment.

3. The things or persons to be searched for are described as follows: All food processing and manufacturing equipment, food contact surfaces, food processing & control records and documents, food storage equipment, food refrigeration

equipment, hand washing sinks, equipment sinks, rest rooms, water supplies, food labels and raw materials & ingredients used or relating to the manufacture, processing and/or offering for sale of goats cheese.

4. The material facts constituting probable cause that the search should be made are: Offering for sale food products at the Charlottesville Farmers Market on June 19, 1999 by an individual identifying himself as John Cole residing at 1836 Polo Grounds Road, Charlottesville, VA (in Albemarle County) without being inspected by the Commissioner of Agriculture and Consumer Services as required by law. Va. Code 3.1-398.1.

5. The object, thing or person searched for constitutes evidence of the commission of such offense.

6. [ ] I have personal knowledge of the facts set forth in this affidavit OR

[X] I was advised of the facts set forth in this affidavit, in whole or in part, by an informer. This informer's credibility or the reliability of the information may be determined from the following facts: Goats cheese offered for sale by an individual identifying himself as John Cole at the Charlottesville Farmers Market on June 19, 1999, goats cheese was purchased by Inspector Joe Farizio and Inspector Laurie Malony, agents of the Commissioner of Agriculture and Consumer Services.

The statements above are true and accurate to the best of my knowledge and belief.

[signature] John A. Morano, Jr.

Subscribed and sworn to before me this day.
6/22/99 11:56 a.m. [signature] Carolyn P. Peyton, Magistrate.

SEARCH WARRANT
COMMONWEALTH OF VIRGINIA In re/V. Christine Solem

SEARCH WARRANT
[X] To any policeman of a county, city or town:
[ ] To _____

You are commanded in the name of the Commonwealth forthwith to search either in the day or night Satyrfield Goat Farm, 1836 Polo Grounds Rd., Charlottesville, VA (Albemarle Co.). A faded masonite board two story residence and surrounding barns used for milking goats and/or storage of food products, food ingredients and/or food processing equipment **for the following property, objects and/or persons:** [here is typed the identical items listed in the affidavit, par. 3].

You are further commanded to seize said property, persons, and/or objects if they be found and to produce before the Albemarle Circuit Court **Court an inventory of all property, persons, and/or objects seized.**

This search warrant is issued in relation to an offense substantially described as follows: Refusal to permit entry of agents of The Commissioner of Agriculture and Consumer Services as provided by [here follows "3.1-388(e)" with a line

drawn through it followed by the handwritten initials "CPP" after which appears in handwriting, "3.1-399 CPP."

I, the undersigned, have found probable cause to believe that the property or person constitutes evidence of the crime identified herein or tends to show that the person(s) named or described herein has committed or is committing a crime, and further that the search should be made, based on the statements in the attached affidavit sworn to by James A. Morano, Jr., **Name of Affiant.**

6/22/99 12:14 p.m. [signature] Carolyn P. Peyton **Carolyn P. Peyton, Magistrate**

The warrant was put in the hands of Karl Mansoor, an Albemarle police officer, who proceeded to execute it in the company of Williams and Ollinger. They went into the kitchen and other parts of the house, opened drawers, and took photographs. They seized goats' cheese that they found therein.

Their Search Inventory and Return lists as items seized containers of goat cheese and a sealed container of well water, and is signed by K. E. Mansoor, executing officer. Based upon the afore-

said observations and seizures during the search, summons were issued against each defendant herein in the Albemarle County general district court charging inter alia failure to secure food properly at the residence in violation of V. C. sec. 3.1-368, and manufacturing adulterated food at the residence in violation of V.C. sec. 3.1-388(a). Defendants, pro se, were convicted of the above 2 charges, and then appealed to the Albemarle County Circuit Court for a trial de novo.

The Commonwealth conceded that licensure is not required for a person who makes goats cheese and sells it. Solem and Coles, still pro se, filed a written motion to suppress the results of the search as being in violation of the Fourth Amendment (Record p. 90, 101). In that motion, defendants wrote,

> 12. However, refusal to allow State agents to enter one's home without a warrant is not an "offense."

In support thereof, they cited Camara v. Municipal Court, 387 U.S. 523 (1967).

The further contended that the affidavit was so "facially deficient and lacking in indicia of probable cause so as to render official belief in their existence entirely unreasonable." They claimed there was no relation between the material facts constituting probable cause and the items to be searched, and the magistrate served as a "rubber stamp" for the affiant's conclusions.

The Commonwealth asserted that even if sec. 3.1-399 is unconstitutional, a search warrant based thereon is not invalidated simply due to a subsequent finding that the offense cited as the basis for the search is unconstitutional, citing Illinois v. Krull, 480 U.S. 340 (1987). Also, it contended that even if the search warrant was defective, there

was good faith reliance under United States v. Leon, 468 U.S. 897 (1984), so suppression should not be ordered.

Hearing was held before the circuit court on August 29, 2000, and August 30, 2000. The Court stated it would overrule the motion to get the whole case before the court and then revisit the motion after all the evidence was in. The Court in a letter ruling dated November 29, 2000, denied all defendants' motions, without explanation.

At the trial, the Commonwealth introduced into evidence photographs of the interior of the house taken during the search, laboratory analyses of goats' cheese seized during the search, and testimony of what the agents observed during the search, which was the sole evidence to obtain the convictions. The Court found each defendant guilty of a 3.1-368 violation and a 3.1-388(a) viola-

tion, and imposed a $100 fine on each.

Defendants pro se appealed to the Virginia Court of Appeals, arguing "the 'offense' listed [in the search warrant] is not an 'offense' when a private home is involved[,]" (pet. for appeal, p. 5) citing Camara, that the warrant did not recite a valid offense, that the warrant/affidavit were lacking in probable cause and facial cohesion, and that Leon good faith did not apply. After being awarded an appeal, they reiterated these contentions in their opening brief. In its brief, the Commonwealth wrote, "In sum, the refusal to allow Agriculture Department agents to conduct warrantless inspections of a residence being used, like the defendants', as a food producing business is a valid and constitutional offense, Camara notwithstanding."; it also argued Leon good faith applied to prevent suppression.

In an unpublished Memorandum Opinion dated October 15, 2002, by the Honorable G. Steven Agee, a panel affirmed the judgment. First, it ruled that the warrant stated a valid offense. Judge Agee wrote that the warrantless search authorized by sec. 3.1-399 was reasonable, and that the goat cheese operation was subject to warrantless search.

The Court ruled that when Solem then refused entry, the warrant stated a valid offense. It wrote,

> [T]he procedure followed by the Department in this case was exactly that prescribed by the United States Supreme Court in Camara. 'Warrants should normally be sought only after entry is refused...' Camara, 387 U.S. at 539.

(Op. p. 6, n. 2).

On the issue of whether the warrant was issued on probable cause, it cited Illinois v. Gates, 462 U.S. 212 (1983) for the definition of probable cause (Op. 6). Judge Agee then wrote,

In this case, the magistrate was informed that agents of the Department observed Coles sell goat cheese in a public market on June 19, 1999; that the goat cheese was being sold without prior inspection by the Department, in violation of Code sec. 3.1-398.1; that Coles resided at Satyrfield farm and that agents of the Department had been refused entry to inspect at Satyrfield Farm. These facts provided the magistrate with probable cause to believe Satyrfield Farm was subject to inspection and entry had been denied in violation of Code sec. 3.1-388(e). The things to be searched would provide evidence that Satyrfield Farm was producing goat cheese for sale to the public and was, therefore, subject to inspection which should not have been refused.

(Op. 7-8). It thus made no Leon finding.

Solem and Coles filed a combined petition to rehear and petition for rehearing en banc. The Court denied such petitions. Solem and Coles then engaged undersigned counsel who appealed to the Virginia Supreme Court.

In his petition for appeal, undersigned contended, "[T]here was an utter absence of any evidence from which a reasonable magistrate could conclude

probable cause..." (Pet. 24). He further argued that even if the affidavit had alleged a "refusal" to permit a warrantless search of a residence, such could not constitutionally be considered as a basis for the issuance of a search warrant, citing Gardner v. State, 566 S.E.2d 329, 332 (Ga. App. 2002) (Pet. 28). The Commonwealth filed a Brief in Opposition, and Motion to Dismiss, arguing that under V.C. sec. 17.1-410, which makes decisions of the Va. Court of Appeals final where no jail time is imposed, except where the matters involve substantial constitutional questions or matters of significant precedential value, there was no jurisdiction.

The Va. Supreme granted the motion to dismiss on those grounds by an order dated October 9, 2003. Rehearing was denied by order dated January 30, 2004. By order dated March 17, 2004, such Court

deferred forwarding of its mandate while proceedings are pending in this Court.

DIRECT AND CONCISE ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

In the companion cases of Camara v. Municipal Court, 387 U.S. 523 (1966), and See v. City of Seattle, 387 U.S. 541 (1967), this Court reversed Frank v. Maryland, 359 U.S. 360 (1959), and ruled that "administrative searches" were subject to the requirements of the Fourth Amendment, U.S. Const., Amend. IV, which is applicable to the states through the Due Process Clause. U.S. Const., Amend. XIV. In Camara, this Court ruled that Roland Camara, against whom complaint had been made that he was living in the back of his store, which had been commercially leased on the ground floor of an apartment building, could not criminally be

prosecuted under San Francisco Housing Ordinance sec. 507 for refusing a warrantless inspection authorized by sec. 503. In See, the Court ruled that Norman See could not be criminally prosecuted for refusing a warrantless inspection of his commercial warehouse.

This Court, however, has never ruled whether such a refusal, when such is the sole basis for obtaining a traditional criminal search warrant, may be considered by a magistrate in determining whether "probable cause" exists to issue such a warrant. This case provides this Court with an opportunity to rule whether such bare refusal alone may furnish grounds for the issuance of a criminal search warrant, and, if one is issued, whether suppression of the evidence obtained thereby is required as a matter of federal constitutional law.

Preliminarily, however, it is appar-

ent that the affidavit is lacking in numerous essentials for the obtaining of a search warrant based on a "refusal" offense, whether such be considered an offense under V.C. sec. 3.1-388(e), V.C. sec. 3.1-399 combined with V.C. sec. 3.1-418, or V.C. sec. 3.1-398.1 combined with 3.1-418.[1] It contains no express averment that Solem, or anyone else, actually refused admittance. It doesn't state the date that any person went to the resi-

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1. Virginia law, like the law of this Court, requires an examination of the "four corners" of the affidavit to determine if the requisite probable cause for issuance of the warrant exists, McCrary v. Commonwealth, 242 Va. 413, 321 S.E.2d 637 (1984), citing Whitley v. Warden, 401 U.S. 560 (1971), altough "an insufficient affidavit may be supplemented or rehabilitated by information disclosed to the issuing magistrate upon application for the search warrant." McCrary at 228 Va. 231. No contention was made in this case that the magistrate considered any evidence aliunde the affidavit in making her determination there was probable cause to believe a "refusal" offense had occurred.

dence; it doesn't state that Williams, Ollinger or any other person went there; it doesn't state that someone knocked on the door, and that Solem answered and came to the door; and it doesn't state that the person knocking identified himself as a VDACS agent, and that he demanded right of warrantless entry under authority of V.C. sec. 3.1-399 or any other provision of law. "Refusal" is only an offense when made at a food manufacturing plant, and, assuming arguendo the averment of John Coles selling goats cheese at the Farmers Market and living at 1836 Polo Grounds Rd., gave reason to believe such was, indeed, a food manufacturing plant, this affidavit is plainly a "bare bones" affidavit with respect to any offense of "refusal."

There is thus absolutely no indicia whatsoever that a "crime" occurred on the back steps of the residence, such that a

search was proper to obtain proof that the refusal occurred at a food manufacturing plant. The affidavit, being bare bones, is insufficient to support probable cause of a "refusal" offense, and hence there cannot be "good faith" under United States v. Leon, 468 U.S. 897 (1984), to preclude suppression of the results thereof.

Nevertheless, defendants will assume for purposes of argument that the affidavit is sufficient to warrant a reasonable magistrate in believing that there had been a refusal to submit to a warrantless inspection by Solem of her home sought by a VDACS officer, identifying himself as such in the course of his duties, under authority of V.C. sec. 3.1-399. Notwithstanding, there is not the slightest indication in the affidavit that any evidence exists in the home to support the charges of which defendants were

ultimately convicted, V.C. sec. 3.1-368 and V.C. sec. 3.1-388(a), or some criminal offense other than the refusal itself.[2] There is nothing to suggest, for example, that Coles's goats' cheese was impure, fly laden, dirty, or adulterated, from which the affiant sought to induce the magistrate to believe there would be conditions for making cheese in the home that were unsanitary, in violation of some criminal code section.

In Camara, this Court moreover ruled that the "probable cause" which might furnish the basis for a warrant to search by a government inspector need not be the

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2. A violation of V.C. 3.1-368 is made a misdemeanor punishable by a fine of $25 to $100 by V.C. sec. 3.1-381. A violation of V.C. sec. 3.1-388(a) is made a misdemeanor by V.C. 3.1-390(a). Under V.C. sec. 18.2-12, any misdemeanor for which no punishment is prescribed is a Class 1 misdemeanor, and under V.C. sec. 18.2-11, a Class 1 misdemeanor is punishable by jail time up to 12 months, a $2,500 fine, either or both.

same as that used to furnish the basis for a traditional search warrant. 387 U.S. 534. It stated "reasonable legislative or administrative standards" might furnish a basis for a warrant with respect to a particular dwelling. Id. at 538. In apparent response to such, the Virginia General Assembly in 1976 adopted Ch. 24 of Title 19.2 of the Code of Virginia, Inspection Warrants, consisting of V.C. sec. 19.2-393, V.C. sec. 19.2-394, V.C. sec. 19.2-395, V.C. sec. 19.2-396, and V.C. sec. 19.2-397.

Faced with the refusal, purported to be a violation of criminal statute 3.1-388(e), a statute adopted one year prior to Camara, the VDACS agents, however, did not seek an administrative inspection warrant under Ch. 24, asserting that reasonable legislative or administrative standards were satisfied with respect to the dwelling. Had they done so, Solem

and Coles would have been entitled to 24 hour notice that a warrant had been issued under V.C. sec. 19.2-396, unless the issuing judge had found "that there is a reasonable suspicion of an immediate threat to public health or safety." Instead, the inspectors sought a traditional criminal search warrant based on the theory that the refusal itself was "an offense."

Defendants contend that such refusal alone at a home, even if reasonably believed to be a food manufacturing establishment, cannot furnish the basis for issuing a criminal search warrant. In the only precedent which undersigned can locate directly on point, the Court of Appeals of Georgia so ruled in the case of Gardner v. State, 566 S.E.2d 329, 332 (Ga. App. 2002):

> It was error for the magistrate to consider the Gardners' refusal to consent to a search of their residence as part of

the basis for the issuance of the search warrant in this case. Refusing consent to search was the Gardners' right, and "[w]e decline to view the exercise of a constitutional right as a factor in determining probable cause." Thus, the trial court's determination that refusal to consent to a search may be taken into account when determining probable cause is error as a matter of law.

This Court has, in other contexts, ruled that the exercise of a constitutional right, not only may not be the basis of a criminal prosecution, but may not be used in other ways. For example, this Court has ruled that when one exercises the right under the Fifth Amendment to say, in response to police interrogation, "I do not wish to speak," such may not be used as evidence against him at trial, Miranda v. Arizona, 384 U.S. 436 (1966), nor may it be used to impeach an explanation offered at trial. Doyle v. Ohio, 426 U.S. 610 (1976).

At the time of the refusal herein, no Virginia appellate court had ruled wheth-

er 3.1-388(e), incorporating 3.1-399, and adopted one year prior to Camara, violated the Fourth Amendment by criminalizing refusal to submit to warrantless searches. Defendants believe they have a right to refuse a search of their home under Camara, whether the constitutionality of the statute which is the basis of the search warrant has been ruled upon by the Virginia Supreme Court or her intermediate appellate court or not. Solem's refusal was the exercise of "clearly established... constitutional rights of which a reasonable person would have known." Illinois v. Krull, 480 U.S. 340, 355 (1987), quoting from Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

In this case, the Virginia Supreme Court dismissed the petition for appeal because it found there not to be a substantial constitutional question. If this be true, then Fourth Amendment

protection of the home has been seriously eroded. This Court must take this case to protect the privacy of the home in cases where the government does not have probable cause to believe any "crime" occurred, other than the putative "crime" of refusal to admit entry to the home, and then, without seeking an administrative inspection warrant, seeks to make the refusal a basis for a criminal search warrant. If all it takes for the government to obtain a criminal search warrant of a home is a refusal to admit a government inspector into that home when he has no warrant, there is actually no protection of the home because the inspector can simply ask for consent to search, and, when such is refused, obtain a search warrant and then conduct a forcible search.

While this Court recognized Camara's constitutional right to refuse admit-

tance, it was concerned that an inspector might never be able to inspect if the traditional criminal standard of "probable cause" for a particular crime was the sole standard for obtaining a warrant. Hence, it recognized the right to obtain one when reasonable legislative or administrative standards were satisfied with respect to a particular dwelling. When the inspector, however, attempts to treat the refusal itself as a "crime," and seeks a criminal search warrant based on such putative "crime," he does not follow "exactly" "the procedure" "prescribed by the United States Supreme Court in Camara," as claimed by the Virginia Court of Appeals, which plainly erred in so ruling.

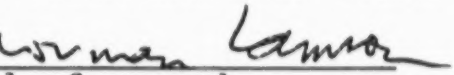
CONCLUSION

The affidavit is "bare bones" as to any averments of a "refusal" offense, could not support probable cause for

issuance of a criminal search warrant in relation thereto, and evidence obtained thereunder must be suppressed. Even if the affidavit provided an inference of a "refusal," Solem had the clearly established right to refuse to submit to a warrantless inspection of her home, and the magistrate could not consider such as an "offense," and hence a reason for searching it. The evidence should be ordered suppressed, and, as there is no evidence supporting the convictions aliunde that obtained in the search, the convictions should be reversed and dismissed.

Respectfully submitted,

CHRISTINE SOLEM and JOHN COLES

By 
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